

NOTE: This order is nonprecedential.

**United States Court of Appeals for the Federal Circuit**

2006-1433

ALLURE HOME CREATION CO., INC.,

Plaintiff-Appellee,

v.

ZAK DESIGNS, INC.,

Defendant-Appellant.

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U.S. DISTRICT COURT  
2007 JUN -4 P 3:45

Before RADER, GAJARSA, and DYK, Circuit Judges.

RADER, Circuit Judge.

**ORDER**

Allure Home Creations Co., Inc. ("Allure") sued Zak Designs, Inc. ("Zak") for patent infringement of its United States Patent No. 6,155,411 (the '411 patent) and Zak counterclaimed seeking declarations of invalidity, non-infringement, and unenforceability for inequitable conduct. Zak also sought attorneys' fees under 35 U.S.C. §285. The case was resolved when Allure filed a covenant not to sue Zak for any products made, used, offered to sell, or sold as of the date of the covenant. The district court then dismissed Zak's claims with prejudice and denied Zak's section 285 claims. Zak appeals these decisions. While this court agrees with the district court decision to deny attorneys' fees under 35 U.S.C. §285, this court finds that the district court erred in dismissing Zak's counterclaims with prejudice. See Intellectual Property Development, Inc. v. TCI Cablevision of California, Inc., 248 F.3d 1333, 1342 (Fed. Cir. 2001).

Upon consideration thereof,


IT IS ORDERED THAT

1. The decision of the district court denying attorneys' fees under 35 U.S.C. §285 is AFFIRMED.
2. The decision of the district court dismissing Zak's counterclaims with prejudice is REVERSED and REMANDED to the district court with instructions for the district court to enter a dismissal of Zak's counterclaims without prejudice.

FOR THE COURT

MAY 11 2007

Date

  
Jan Horbaly  
Clerk

**ISSUED AS A MANDATE:**

JUN 01 2007

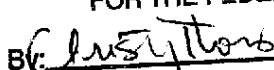
FILED  
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THE FEDERAL CIRCUIT

MAY 11 2007

JAN HORBALY  
CLERK

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UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

By:  Date: 6/1/07